

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

DANA M. KELLEY,)
)
 Plaintiff,)
)
 v.) No. CIV-06-195-FHS-SPS
)
 MICHAEL ASTRUE, Commissioner)
 Social Security Administration)
)
 Defendant.)

OPINION AND ORDER

Before the Court for its consideration is Plaintiff's Motion for Relief Pursuant to Fed.R.Civ.P. 60(b)(6). Plaintiff seeks relief which would allow her to file her motion for attorney fees under 42 U.S.C. § 406(b)(1) within sixty days following her receipt of all notices of award issued by the Social Security Administration. The Court finds Plaintiff is entitled to the requested relief.

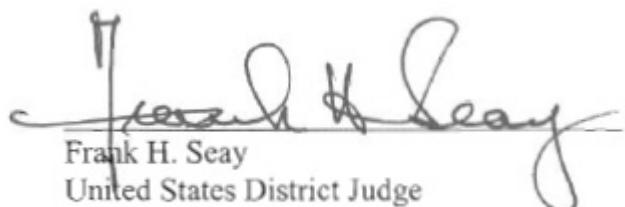
Attorney fees are awardable under 42 U.S.C. § 406(b)(1) when a social security claimant is awarded disability benefits following a remand from a federal district court. McGraw v. Barnhart, 450 F.3d 493, 496 (10th Cir. 2006). In such circumstances, the fourteen-day period running from the date of judgment under Fed.R.Civ.P. 54(d)(2)(B)(i) will have expired and claimants, such as Plaintiff herein, rely on Fed.R.Civ.P. 60(b)(6) to seek such fees well after the expiration of the fourteen-day period. Id. at 505. The McGraw Court noted, however, that "[a] motion for an award of fees under § 406(b)(1)

should be filed within a reasonable time of the Commissioner's decision awarding benefits." Id.

On November 27, 2007, this Court remanded this action to the Commissioner for further administrative action pursuant to sentence four of 42 U.S.C. § 406(g). On September 21, 2009, Plaintiff received a favorable decision from the Administrative Law Judge determining her to be disabled since December 20, 2007. According to Plaintiff, the amount of retroactive benefits awardable to Plaintiff has not been calculated and a notice of award has not been issued by the Commissioner. Under these circumstances, the Court finds it appropriate to authorize Plaintiff to file her § 406(b)(1) motion for attorney fees following her receipt of a notice of award containing the calculation of past-due benefits. The "decision awarding benefits" language referenced by the McGraw Court necessarily includes not only the favorable decision on disability, but the actual award of past-due benefits. Thus, Plaintiff is entitled to file her motion within a reasonable time of the notice of such award.

Plaintiff's Motion for Relief Pursuant to Fed.R.Civ.P. 60(b)(6) is granted and Plaintiff is authorized to file her motion for attorney fees under § 406(b)(1) within sixty days of her receipt of the notice of award containing the calculation of Plaintiff's past-due benefits.

It is so ordered this 30th day of October, 2009.


Frank H. Seay
United States District Judge
Eastern District of Oklahoma